

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-03 H-01 INR-05 L-02

NSAE-00 NSC-05 PA-01 RSC-01 PRS-01 SP-02 SS-15

USIA-06 AID-05 /058 W

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R 061930Z DEC 74

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 1342

LIMITED OFFICIAL USE SANTIAGO 7433

EO 11652: NA

TAGS: PGOV, CI

SUBJ: LEGAL BASIS FOR AUTHORITARIAN JUNTA RULE

1. IN A TIGHTENING-MUP OPERATION REPORTED IN LOCAL PRESS, JUNTA ON DEC 4 ISSUED DECREE LAW STATING

THAT DECREE LAWS ISSUED SINCE SEPT 11, 1973 COUP WHICH MAY BE INCONSISTENT WITH OR CONTRARY TO PRECEPTS OF THE CHILEAN CONSTITUTION HAVE HAD AND CONTINUE TO HAVE THE EFFECT OF CONSTITUTIONAL AMENDMENTS, WHETHER OR NOT THIS WAS EXPLICITLY STATED IN SUCH DECREE LAWS. HENCEFORTH, HOWEVER, DECREE LAWS INCONSISTENT WITH THE CONSTITUTION WILL AMEND LATTER ONLY AS EXPLICITLY INDICATED.

2. PUBLICATION OF NEW DECREE LAW, FIFTEEN MONTHS AFTER COUP, INDICATES THAT SOME LEGALISTICALLY MINDED CHILEANS MUST HAVE BECOME CONCERNED AT LEGAL IRREGULARITY INVOLVED IN TACIT ASSUMPTION THAT EVERY DECREE LAW ISSUED BY JUNTA WAS VALID DESPITE ITS POSSIBLE INCONSISTENCY WITH AN EXISTING CONSTITUTIONAL PROVISION. PREAMBLE TO NEW DECREE JUSTIFIES PROCEDURE TO DATE BY NOTING THAT JUNTA EXERCISES CONSTITUENT AS WELL AS LEGISLATIVE AND LIMITED OFFICIAL USE

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EXECUTIVE AUTHORITY, CITING NOV 1973 DECREE WHICH

EXPLICITLY TRANSFERRED TO JUNTA CONSTITUENT POWER  
FORMALLY EXERCISED BY LEGISLATIVE AND EXECUTIVE  
BRANCHES PURSUANT TO CONSTITUTION. WHILE AS MATTER  
OF DOCTRINE IT MIGHT BE ARGUED THAT EVEN JUNTA WITH  
ITS CONSTITUENT POWERS WOULD HAVE TO STATE EXPLICITLY  
THAT IT WAS MODIFYING CONSTITUTION WHEN IT DID SO,  
NEW DECREE ARGUES THAT THIS VIEW IS NOT VALID DURING  
PERIODS OF EMERGENCY, MUCH LESS "IN CASES IN WHICH,  
BY THE FORCE OF HISTORIC FACTS, THE EXERCISE OF  
CONSTITUENT AND LEGISLATIVE POWER IS JOINED IN A  
SINGLE BODY, WITHOUT FORMALITIES OR DIFFERENTIATED  
REQUIREMENTS FOR ACTION. IN SUCH CIRCUMSTANCES IT IS  
OBVIOUS THAT THE WILL OF SUCH A BODY WILL ALWAYS  
EXPRESS AN OBLIGATORY RULE OF CONDUCT WHICH IF  
DIFFERENT FROM THE CONSTITUTION UNDOUBTEDLY MODIFIES  
IT."

3. COMMENT: AT SOME FUTURE DATE IN HISTORY, CHILEAN  
LEGAL EXPERTS WILL DOUBTLESS DISCUSS QUESTION WHY  
JUNTA FOUND IT NECESSARY TO SAY THAT WHAT GOES WITHOUT  
SAYING GOES BETTER WITH SAYING. NEW DECREE LAW  
APPEARS TO US TO REFLECT BOTH JUNTA'S REALIZATION THAT ITS  
ACTS OUGHT TO HAVE UNQUESTIONED LEGAL BASIS IN CHILEAN  
STATUTE LAW, AND ITS CONFIDENCE THAT FRANK STATEMENT  
OF ITS OMNIPOTENCE WILL CAUSE NO RIPPLES IN CHILE.  
POPPER

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## Message Attributes

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**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** JUNTA, LAW, CONSTITUTION  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 06 DEC 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** izenbei0  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
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**Reference:** n/a  
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**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** LEGAL BASIS FOR AUTHORITARIAN JUNTA RULE  
**TAGS:** PGOV, CI  
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